

## 37 Am. Jur. 2d Fraud and Deceit § 88

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### Fraud and Deceit

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#### IV. False Representations

##### C. Matters of Futurity; Promises and Statements of Intention

###### 2. Promises and Statements of Intention

###### a. In General

## § 88. General rule of nonliability—Illustrative applications

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### West's Key Number Digest

West's Key Number Digest, Fraud  27, 28

Pursuant to the rule that mere promissory statements or unkept promises cannot be made the basis of fraud,<sup>1</sup> it has been held that fraud cannot be predicated on:

- promises to make<sup>2</sup> or to pay<sup>3</sup> loans
- promises of employment<sup>4</sup>
- promises involving domestic relations<sup>5</sup>
- a representation by a county medical examiner and a medical research institute, to a putative organ donor's mother, that the institute would take a sample of the putative donor's brain tissue, which representation was made to obtain the mother's consent<sup>6</sup>
- promises concerning the winning of contests<sup>7</sup>
- promises of payment for services upon completion of rendering the service<sup>8</sup>
- promises as to the management of plaintiff's pension plan involving future performance<sup>9</sup>
- promises involving corporate stock<sup>10</sup>

Similarly, it has been held that fraud cannot be premised on a statement by a vendor of realty that the vendee will not have to use any money but that the vendor's obligation will be only to resell the lots and turn the proceeds over to the vendor until payment is made;<sup>11</sup> on a lessor's promise to a lessee of part of a building that he will not lease all the building to a lessee of another part thereof on the expiration of the promisee's lease unless such other lessee will pay the promisee the price the promisee is demanding from him or her for certain furniture and the promisee's lease interest.<sup>12</sup>

An assertion that one will be indicted for crime and sent to the penitentiary unless a particular thing is done does not amount to fraud,<sup>13</sup> nor does a declaration that one is going to get out of a company, and that the person to whom the representation is made will be voted out, amount to fraud.<sup>14</sup>

On the other hand, deliberately false statements of intention and deliberately fraudulent promises may serve as the basis of a charge of fraud,<sup>15</sup> and this rule is illustrated where—

- a used car dealer falsely promises to obtain liability insurance for a car buyer.<sup>16</sup>
- a purchaser of a business falsely represents the intention to take up residence and run the business, but actually represents others who seek dissolution of the business.<sup>17</sup>
- a lender's false or reckless misrepresentation that it would provide financing after knowingly permitting the prospective borrower to incur debts or other obligations in reliance thereon.<sup>18</sup>

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#### Footnotes

<sup>1</sup> § 87.

<sup>2</sup> *Ritchie Capital Management, L.L.C. v. Jeffries*, 653 F.3d 755 (8th Cir. 2011); *Kiser v. Richardson*, 91 Kan. 812, 139 P. 373 (1914).

<sup>3</sup> *Ramsey v. Reynierson*, 200 Ky. 624, 255 S.W. 274 (1923).

As to statements regarding credit, solvency, and financial standing, generally, see §§ 184 to 193.

<sup>4</sup> § 142.

<sup>5</sup> *Miller v. Miller*, 242 Iowa 706, 46 N.W.2d 732 (1951) (promise by a husband to return an automobile to his wife when a divorce was obtained).

Even if a prospective father-in-law promised a prospective son-in-law that if he married his daughter he would have permanent employment with the father-in-law's company and could take the company over in the future, and the father-in-law did employ the son-in-law after marriage, discharge of the son-in-law after the marriage failed did not constitute fraud. *Kashan v. Best Metropolitan Towel & Linen Supply Co., Inc.*, 51 A.D.2d 730, 379 N.Y.S.2d 140 (2d Dep't 1976).

As to promises to marry, see § 140.

<sup>6</sup> *Adams v. King County*, 164 Wash. 2d 640, 192 P.3d 891 (2008).

<sup>7</sup> *Brown v. C.A. Pierce & Co.*, 229 Mass. 44, 118 N.E. 266 (1918) (promise of winning a prize in a voting contest).

<sup>8</sup> *Hunt v. Lewis*, 87 Vt. 528, 90 A. 578 (1914) (promise to pay attorneys as soon as their services were performed).

<sup>9</sup> *Stoler v. Metropolitan Life Ins. Co.*, 287 So. 2d 694 (Fla. 3d DCA 1974).

<sup>10</sup> *Campbell v. Eastern Bldg. & Loan Ass'n of New York*, 98 Va. 729, 37 S.E. 350 (1900); *Sweeny v. Sweeny Inv. Co.*, 199 Wash. 135, 90 P.2d 716, 139 A.L.R. 847 (1939).

<sup>11</sup> *State Bank of Iowa Falls v. Brown*, 142 Iowa 190, 119 N.W. 81 (1909).

As to promises relating to improvements to property, see §§ 145, 146.

As to statements relating to the value, cost, and income of property, generally, see §§ 170 to 183.

<sup>12</sup> *Rankin v. Burnham*, 150 Wash. 615, 274 P. 98 (1929).

<sup>13</sup> *Alms & Doepe Co. v. Young*, 20 Ohio L. Abs. 325, 1935 WL 1910 (Ct. App. 1st Dist. Hamilton County 1935); *Kathan v. Comstock*, 140 Wis. 427, 122 N.W. 1044 (1909).

<sup>14</sup> *Boulden v. Stilwell*, 100 Md. 543, 60 A. 609 (1905); *Alms & Doepe Co. v. Young*, 20 Ohio L. Abs. 325, 1935 WL 1910 (Ct. App. 1st Dist. Hamilton County 1935).

<sup>15</sup> § 91.

<sup>16</sup> *Valdez v. Taylor Auto. Co.*, 129 Cal. App. 2d 810, 278 P.2d 91 (2d Dist. 1954).

<sup>17</sup> *Peoples Sav. Bank v. Stoddard*, 359 Mich. 297, 102 N.W.2d 777, 83 A.L.R.2d 344 (1960).

<sup>18</sup> [Banker's Trust Co. of Western New York v. Steenburn](#), 95 Misc. 2d 967, 409 N.Y.S.2d 51 (Sup 1978), judgment aff'd, [70 A.D.2d 786, 418 N.Y.S.2d 723](#) (4th Dep't 1979).

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